

OGC HAS REVIEWED.

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REDEFINITIONS

In the Anglo-American legal tradition extensive protection is given to the right of inviolability of the person. In the civil law (and the criminal law is similar) this protection arose under the old act of trespass. Trespass to the person involves the three torts of battery, assault and false imprisonment.

All of these torts involve intentional acts by the aggressor. Battery is an unlawful touching, injurious or offensive. Assault is an act which leads the victim to immediate fear of a battery. False imprisonment is the unlawful restriction of the movements of another.

"Unlawful," in the foregoing definitions, means lacking in privilege or in the consent of the victim. "Privilege" includes the rights of officers of the law to proceed in the performance of their duties or the right of any individual to protect himself against the trespass of another. "Consent" is the acquiescence of the victim but it is vitiated if it is induced by fraud.

In their campaigns to induce the defections of those who have fled from the Communist tyranny to asylum in the United States, various Soviet and satellite officials have committed acts which constitute trespasses in both the civil and criminal sense because much of their activity is clandestine and because the victim usually fears to testify even if he has resisted the pressures brought upon him for defection, their prosecution is impossible in the majority of instances. The

lack of ability to punish for the act, however, in no way affects the fact that the act has transpired.

There is no evidence that currently these Communist agents are using force within the United States. There is ample evidence, however, that they have used it in the past and their present restraint seems based upon political expediency. There is also ample evidence that once the individual is induced to defect and returns behind the iron curtain this restraint is completely released. Assault, under the above definition, is the most common violation reported. In some instances the threat of violence to the individual or to his loved ones who are still under Communist control is direct and explicit. In other cases the threat is more veiled. Frequently, for example, the refugee is presented with a letter from his loved ones begging for his return. To those sufficiently sophisticated in the ways of Communist governments the mere knowledge that relatives have been identified and have been contacted by the authorities raises the picture of what may happen to those relatives if the refugee is adamant in his refusal to return.

When an individual is induced to return, or even at some earlier point when he is induced to entrust himself to the tender mercies of Soviet officials in this country, his freedom of movement is being restricted against his will and in most cases without his consent fairly obtained. Clearly if that consent is obtained through force or threat of force, it is invalid. It is equally invalid if it is obtained by misrepresentation and fraud, such as demonstrably false

promises of immunity or reunion with families, even of preferential treatment in jobs and living quarters. The record shows countless cases in which individuals who returned behind the iron curtain relying on the promises found only death or imprisonment or forced labor.

There is an underlying air in the personal contacts made with these refugees by Soviet officials of omnipotence, omniscience and the mailed fist. Contacts are usually made clandestinely and not in official offices. One could scarcely object to a consul, for example, who spoke to one of his nationals in the consulate. An official who meets the refugee on a street corner using for himself an alias and false credentials has lost his official status. There is reason to believe that these meetings are arranged clandestinely not only to limit American surveillance of official action, but also to strike fear into the heart of the refugee who must feel in these instances that even in this country the Communist agent who approaches him is more powerful than the American police.

In sum, threat of force to the refugee, threat or actual force upon his loved ones, false representations and all the sinister trappings of a powerful underground are found in these cases. Coupled with these are more public misrepresentations in advertising accepted by American communications media and transmitted into the United States mails.

If this sort of activity were undertaken by a private person or a group of persons we would call them racketeers or confidence men and we would proceed against them with all the force of the law. Officials of

foreign governments should be held to an even higher standard of conduct. Many of the officials in these defection cases have divested themselves of any official status to which they may be entitled through their assumptions of false identities. They have violated the hospitality of their hosts.

It would seem proper that the widespread deportation of Communist officials who have participated in these activities and the refusal of the post office and of communications media to lend assistance to their fraudulent schemes would bring about a significant reduction in the campaign that they are waging. What is more, such a program, if well publicized, would do much to hearten those refugees who come to us seeking justice and the equal protection of the laws.